

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23CV005009-500

MICHELLE ANTOINE,

Plaintiff

v.

JOHNSTON COUNTY BOARD OF
EDUCATION & LYN ANDREWS, in her
capacity as chair of the JOHNSTON
COUNTY BOARD OF EDUCATION

Defendants.

**NOTICE TO STATE COURT OF
REMOVAL TO FEDERAL COURT**

PLEASE TAKE NOTICE that on September 15, 2023, Defendants removed the above-styled action to the United States District Court for the Eastern District of North Carolina, Western Division. Pursuant to 28 U.S.C. §§ 1441 and 1446(d), a copy of Defendants' Notice of Removal without attachments is attached hereto as Exhibit 1.

This notice is submitted to the Johnston County Superior Court under 28 U.S.C. § 1446(d) to effectuate removal of this case to the United States District Court for the Eastern District of North Carolina. Upon receipt of this notice, 28 U.S.C. § 1446(d) prohibits the Johnston County Superior Court from proceeding further with this action.

Johnston County Clerk of Superior Court

Respectfully submitted the 15th day of September, 2023.

POYNER SPRUILL LLP



By: _____

Stephanie L. Gumm
N.C. State Bar No. 53485
sgumm@poynerspruill.com
P.O. Box 1801
Raleigh, NC 27602-1801
Telephone: 919.783.2819
Facsimile: 919.783.1075
Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice to State Court of Removal to Federal Court was served by first class mail, pre-paid postage addressed to the following:

David "Steven" Walker
Walker Kiger, PLLC
100 Professional Ct, Ste 102
Garner, NC 27529
Attorneys for Plaintiff

This the 15th day of September, 2023.



Stephanie L. Gumm

Exhibit 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:23-cv-00508

MICHELLE ANTOINE,

Plaintiff,

vs.

JOHNSTON COUNTY BOARD OF
EDUCATION & LYN ANDREWS, in her
capacity as chair of the JOHNSTON
COUNTY BOARD OF EDUCATION,

Defendants.

**NOTICE OF REMOVAL
OF CIVIL ACTION UNDER
28 U.S.C. §§ 1331, 1441, 1446
(Federal Question Jurisdiction)**

Johnston County Superior Court
File No. 23CV005009-500

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendants Johnston County Board of Education and Lyn Andrews, in her capacity as chair of the Johnston County Board of Education (collectively, the “Defendants”), give notice of removal of the above-captioned action from Johnston County Superior Court to this Court.

As grounds for removal, Defendants state the following:

BACKGROUND

1. On September 12, 2023, Plaintiff Michelle Antoine commenced this action by filing a verified complaint, which includes motions for temporary restraining order and preliminary injunction, and having a summons issued against the Defendants in the Johnston County Superior Court. The matter was assigned file number 23CV005009-500 and is styled *Michelle Antoine v. Johnston County Board of Education & Lyn Andrews, in her official capacity as chair of the Johnston County Board of Education*.

2. Plaintiff filed the verified complaint “provisionally under seal” pursuant to Rule 27 of the North Carolina General Rules of Practice for the Superior and District Courts by filing a motion to seal the complaint and any temporary restraining order entered in the matter on September 12, 2023.

3. On September 12, 2023, the Johnston County Superior Court granted Plaintiff’s motion for a temporary restraining order *ex parte*, which the court sealed.

4. On September 13, 2023, Defendants were served with the summons and the verified complaint, and a return of service was filed.

5. On September 14, 2023, Plaintiff served a copy of the *ex parte* temporary restraining order on Defendants.

6. On September 14, 2023, Plaintiff served a motion to close the Board’s proceedings related to this matter.

7. Pursuant to 28 U.S.C. § 1446(a), true and accurate copies of the (1) summons; (2) verified complaint (including motions for temporary restraining order and preliminary injunction); (3) motion to seal the complaint and temporary restraining order, (4) return of service; (5) temporary restraining order; (6) certificate of service of temporary restraining order; and (7) motion to close proceedings are attached as **Exhibits 1–7**. To date, these documents are the only documents served upon the Defendants in this case.

8. Defendants file this Notice of Removal pursuant to 28 U.S.C. § 1446. This Notice of Removal is being filed with the Court within 30 days of Defendants’

receipt of a copy of Plaintiff's verified complaint, as required by 28 U.S.C. § 1446(b). The time for removing this action to federal court has not expired.

9. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the Clerk of Superior Court, Johnston County, North Carolina, promptly after the filing of this Notice, and written notice will be served on counsel for the adverse party. A copy of the Notice to State Court of Removal to Federal Court (without attachments) is attached as **Exhibit 8**, and a copy of the Notice of Removal to Adverse Party (without attachments) is attached as **Exhibit 9**.

JURISDICTION

10. Pursuant to 28 U.S.C. § 1441(a):

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

11. Additionally, pursuant to 28 U.S.C. § 1331, the District Courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

12. The verified complaint alleges causes of action for violations of federal constitutional due process rights and for violations of the federal constitution's Equal Protection Clause pursuant to 42 U.S.C. § 1983. Therefore, this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and this action is removable pursuant to 28 U.S.C. § 1441.

13. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367, which provides:

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C § 1367(a). Here, Plaintiff's Section 1983 claims and her North Carolina constitutional claim and defamation claim are substantially related with regard to facts alleged in the verified complaint, and those claims concern the same allegedly unlawful actions. Moreover, Plaintiff's North Carolina constitutional and tort law claims do not raise a novel or complex issue of state law, nor do they predominate over Plaintiff's Section 1983 claims.

VENUE

14. The Western Division of the United States District Court for the Eastern District of North Carolina is the judicial district and division embracing the place where this action is pending. *See* 28 U.S.C. § 113.

15. Plaintiff initiated this action in Johnston County, which is located within this Court's venue.

WHEREFORE, Defendants hereby provide notice that Civil Action No. 23CV005009-500 is removed from the General Court of Justice, Superior Court Division, Johnston County, North Carolina to this Court for all further proceedings.

Respectfully submitted this the 15th day of September, 2023.

POYNER SPRUILL LLP

By: /s/ Stephanie L. Gumm
Stephanie L. Gumm
NC State Bar No. 53485
sgumm@poynerspruill.com
P.O. Box 1801
Raleigh, NC 27602-1801
Tel: (919) 978-2819
Fax: (919) 783-1075

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and that a copy was sent to the following recipients by United States Mail, first class, postage pre-paid.

David "Steven" Walker
Walker Kiger, PLLC
100 Professional Ct, Ste 102
Garner, NC 27529
Attorneys for Plaintiff

This the 15th day of September, 2023.

/s/ Stephanie L. Gumm

Stephanie L. Gumm